

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter)	CUID Nos.	CA0396 (Oxnard)
)		CA0397 (Port Hueneme)
Jones Intercable, Inc.)		
)		
Petition for Reconsideration)		

ORDER ON RECONSIDERATION

Adopted: March 5, 2002

Released: March 7, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 98-103 ("1998 Order"),¹ filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator") on February 23, 1998. Our 1998 Order resolved complaints against Operator's cable programming services tier ("CPST") rates in effect beginning May 15, 1994 and found Operator's CPST rates to be unreasonable. We previously resolved complaints against Operator's CPST rates in effect through May 14, 1994 in our Order, DA 95-2087 ("1995 Order").² Although our 1995 Order did not require Operator to pay refunds, Operator filed an application for review ("Application") of our 1995 Order on November 20, 1995. In this Order, we modify our 1998 Order and dismiss Operator's Petition and Application because a review of Operator's Petition and Application would have no effect on Operator's refund liability and would encumber limited Commission resources.

2. Under the Communications Act,³ the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁴ required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber. The Telecommunications Act of 1996 ("1996 Act"),⁵ and our rules implementing the legislation ("Interim Rules"),⁶ which were in effect at the time the complaint was filed, require that a complaint against the CPST rate be filed with the Commission by a local franchising authority ("LFA") that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a

¹ See In the Matter of Jones Intercable, Inc., DA 98-103, 13 FCC Rcd 929 (1998).

² See In the Matter of Jones Intercable, Inc., DA 95-2087, 10 FCC Rcd 11423 (1995).

³ Communications Act, Section 623(c), as amended, 47 U.S.C. §543(c) (1996).

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

justification of its CPST rates.⁷ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁸

3. Section 623(c) of the Communications Act,⁹ which establishes the criteria for Commission regulation of the cable programming service tier, does not apply to cable programming services provided after March 31, 1999.¹⁰ The Commission does not have authority to review CPST rates which became effective after March 31, 1999. Since 1993, the Commission has been receiving and resolving complaints from subscribers and LFA's regarding CPST rates. Although the Commission has resolved almost 18,000 complaints involving 5,700 communities during that time frame, there are still complaints that are pending and need to be resolved. In addition to the pending complaints, there are a number of pending petitions for reconsideration of prior orders. Most of these prior orders that are the subject of a pending appeal determined that a cable system operator had incurred refund liability for overcharges on its CPST. Several petitions are against prior orders which found that the operator did not incur any refund liability, either because its CPST rate was found to be reasonable or because the total amount of the refund was *de minimis* and it would not have been in the public interest to order a refund.

4. It would not be a judicious use of Commission resources to attempt to resolve appeals of CPST rate orders which had no adverse affect on the petitioner, either because the order found no refund liability at all or found a *de minimis* liability which did not later result in the petitioner incurring actual refund liability. Resolution of such appeals will have no consequences other than to put additional strain on limited Commission resources which are better put to resolving pending complaints and appeals of orders which involve potential or actual refund liability. Therefore, we have determined that appeals of CPST rate orders which do not involve actual refund liability will be dismissed because there is no real relief which may be granted through resolution of the appeal.

5. In response to Operator's Petition, we reviewed the record upon which our 1998 Order was based. Our review revealed that Operator should be allowed to offset its CPST overcharges with CPST undercharges for the same time period under review. We have previously allowed an operator to offset its CPST overcharges with its CPST undercharges within the same time period.¹¹ Unlike inter-tier offsets between the CPST and the basic service tier ("BST"), which we have rejected,¹² intra-tier offsets between two CPSTs do not require the Commission to review or monitor the BST. In this case, it is appropriate to allow Operator to offset its CPST overcharges for its CPST-2 with the CPST undercharges for its CPST-3 during the time period beginning July 15, 1994. Because our determination to allow offsets relieves Operator

⁷ 47 C.F.R. §76.956.

⁸ 47 C.F.R. §76.957.

⁹ 47 U.S.C. § 543(c).

¹⁰ See 47 U.S.C. § 543(c)(4) (1996).

¹¹ See *In the Matter of C-TEC Cable Systems of Michigan, Inc., et al.*, 13 FCC Rcd 16488 (1998), and cases cited therein.

¹² See *In the Matter of Cencom Cable Income Partners II, LP*, FCC 97-205, 12 FCC Rcd 7948 (1997).

from its obligation to pay any refunds based on our 1998 Order, we will modify our 1998 Order to exclude any refund liability. In our 1995 Order, we found Operator's refund liability to be *de minimis* and did not order Operator to pay refunds. Therefore, a review of Operator Application will have no effect on Operator's refund liability. In order to conserve Commission resources, we will dismiss Operator's Petition and Application without addressing the merits of Operator's arguments.

6. Accordingly, IT IS ORDERED, pursuant to Sections 0.321 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.321 and 1.106, that Operator's petition for reconsideration and application for review ARE DISMISSED.

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that In the Matter of Jones Intercable, Inc., DA 98-103, 13 FCC Rcd 929 (1998) IA MODIFIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
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